

## GENERAL TERMS AND CONDITIONS FOR THE SUPPLY AND ASSEMBLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS

Przeworsk, November 2021

### RECITALS

1. These General Terms and Conditions, in case there should not be any other agreement, shall be binding in each case when the Company B&P Engineering Sp. z o.o. shall be a party to an agreement.

Should these Terms and Conditions not be applied in relation to a specific agreement, any changes or deviations from the General Terms and Conditions shall be made in writing, otherwise null and void.

### DEFINITIONS

2. The terms used in the General Terms and Conditions shall be understood in the following way:
  - **"Agreement"** is the written contract and/or agreement concluded between the Parties, including all and any attachments thereto, including the potential settlements and additions to the above mentioned documents.
  - **"Contractual Price"** is the price that is to be paid for the subject of the contract or agreement, if it is not indicated whether it is a net or gross amount, it is assumed it is the net amount,
  - **"Gross Negligence"** is an action or omission for which a given Party either did not exercise the accepted in the commercial turnover/minimum due diligence in relation to the occurrence of serious consequences which could have been foreseen by the Party responsible with exercising due diligence, or for which a given Party deliberately neglected the consequences of such actions or omissions.
  - **"In writing"** means by means of a written document which is signed by both Parties, or else in the form of a letter, fax, e-mail or in some other form agreed by the Parties with the reservation of the rule of proper representation of the Parties.
  - **"Subject of the Agreement"** includes each machine, equipment and materials, as well as the services which the Contractor should deliver in accordance with the Agreement, and this obligation in an explicit way appears from the contents hereof.
  - **"Place of delivery"** is the place in which the subject of the delivery is to be installed, and it includes neighbouring areas which are necessary for unloading, storing and internal transporting of the subject of the delivery and the assembly equipment, including the necessary media.
  - **"Work"** includes both the subject of the delivery, assembly, and other works which the Contractor should render in accordance with the Agreement. If the Agreement provides for the Work to be accepted in several stages which are intended for use individually from each other, these Terms and Conditions shall apply separately to each stage. The term "Work" shall apply respectively to each given section.



- **"Contractor"** shall mean Spółka B&P Engineering Sp. z o.o., possibly some other entity explicitly indicated by that Company.

### INFORMATION ABOUT THE PRODUCT

3. The general documentations of products and pricelists existing in an electronic form or in some other form contain data and information which is binding only should the contents of the Agreement contain the clear reference to them, including the determination of their significance for the economic relationship. In no case such information can be regarded as a binding offer of the Company B&P Engineering Sp. z o.o.

### DRAWINGS AND DESCRIPTIONS

4. If one of the Parties presents the other Party with drawings and technical documents concerning the Work before or after the conclusion of the Agreement, they shall remain the property of the Party that presented them. The Contractor shall have the right to use the obtained drawings and other documents from their contractors without the need to pay additional remuneration on that account.
5. If one Party hereof gets drawings, technical documents or other technical information, they may use them without the Contractor's consent in accordance with its purpose, specifically determined in the contents of the Agreement between the Parties. Such materials cannot be used for other purposes, copied, reproduced, transferred and communicated to third parties, without the explicit prior written consent of the Contractor.
6. The Contractor shall hand over to the Ordering Party – at the moment of acceptance and payment of the remuneration to the Contractor agreed by the Parties – data and drawings which will enable the Ordering Party to start-up, use and maintain the subject of the Agreement. The agreed number of such instructions and drawings should be handed over, however at least one copy should be provided. All Intellectual Property rights of any type, past, present and future, concerning the Contractor's Documents and the subject of the Agreement, shall remain the sole property of the Contractor or third parties from which the Contractor obtained those rights.

### EXAMINATION BEFORE SHIPMENT

7. Examination before shipment which was agreed in the Agreement shall be, if it is not otherwise specified, conducted at the place of production (the Contractor's plant) in the regular working hours.
8. If the Agreement does not contain any provisions concerning the technical requirements, then the generally accepted practice in a given branch of industry existing in the country of manufacture, as well norms coming from proper administration bodies, shall be reliable for conducting research. The Contractor must inform the Ordering Party about such examination early enough, so that they could be represented during such examination. If the Ordering Party is not present, the Contractor shall hand them over the examination reports the correctness of which cannot be later questioned by the Ordering Party.
9. If at the time of examination, it will turn out that the Subject of the Agreement is at variance with the Agreement, the Contractor should immediately remove all defects in order to restore



the Subject of the Agreement to the condition in accordance with Agreement. The Ordering Party may demand the repetition of examination only in the case of occurrence of significant defects.

10. The Ordering Party shall cover all costs, including costs of travel and allowances which they incur in connection with the examination.

#### **PRELIMINARY WORKS AND CONDITIONS OF WORK**

11. The Contractor may deliver the drawings for the assembly of the Subject of the Agreement and all instructions which are necessary to complete the suitable foundations, to deliver the Subject of the delivery, and the necessary elements of equipment, where the Subject of the Agreement is to be placed, and to made all the necessary connections.
12. The Ordering Party shall make available early enough all devices and shall take care that all the conditions necessary for the assembly of the Subject of the Agreement and faultless use of the Work have been met. It does not apply to works which according to the Agreement should be completed by the Contractor.
13. The Ordering Party must carry out preliminary works in accordance with the drawings and instructions supplied by the Contractor, if such had been provided pursuant to point 11. Such works should be concluded early enough, however not later than fourteen days before the commencement of works by the Contractor on the place of the planned investment. The Ordering Party should in each case ensure that the elements of buildings and structures (including the foundations) were strong enough. Should the Ordering Party be responsible for the transport of the Subject of the Delivery to the place of the assembly, they should take care about the Subject of the Delivery being delivered at the right time, and the unloading in the place of destination was conducted in the professional way under the Contractor's supervision.
14. The Contractor shall bear the costs of the necessary actions the completion of which will be necessary in connection with the faulty or incomplete drawings or instructions according to point 11, provided such irregularities result from the sole fault of the Contractor, they discover the defect or the lack of completeness within the time mentioned in point 52 or will be informed about them within that time.
15. The Ordering Party should take care so that:
  - a. the Contractor's employees had the possibility to commence work in accordance with the agreed schedule and to perform work during normal working hours. The works can be conducted outside the regular working hours, provided the Contractor finds it necessary and provided the Ordering Party has been informed in writing within the proper time.
  - b. the Contractor was early enough shown in writing and before the commencement of the assembly all suitable settlements in the scope of safety which are binding at the place of the assembly. The assembly will not be conducted in the surrounding harmful to health or dangerous. All the necessary actions in the scope of safety and protection should be undertaken before the commencement of the assembly and maintained during the assembly.



- c. the Contractor's employees had the possibility to have proper accommodation and food in the vicinity of the place of the assembly, and so that they had the access to sanitary devices and medical care which correspond to international standards.
- d. the Contractor was made available in the place of the assembly, free of charge and on time, all the necessary utilities, cranes, lifts and means of transport in the place of the assembly, additional devices, machines, auxiliary and raw materials (including petrol, oils, lubricants and other materials, gas, water, electricity, steam, compressed air, heating, lighting, etc.) and the Ordering Party's measurement and control instruments available at the place of the assembly. The Contractor shall inform the Ordering Party in writing at least a month before the commencement of the assembly, what sort of cranes, lifts, measurement and control instruments and means of transport they will need at the place of the assembly.
- e. the possibilities of free storing was provided in order to protect the subject of the delivery, the tools necessary to conduct the assembly, the elements of equipment and personal belongings of the Contractor's employees against theft and deterioration.
- f. access roads to the place of the assembly were suitable for doing the necessary transport of the subject of the delivery, parts and elements of the equipment of the Contractor.

#### **NON-FULFILMENT OF OBLIGATIONS BY THE ORDERING PARTY**

- 16. If the Ordering Party is able to foresee that they will not meet their obligations regarding the completion of work, in particular in accordance with the conditions included in points 12, 13 and 15, they should immediately inform the Contractor about that in writing, giving the reason, and – as far as possible – the date in which they will be able to fulfil their obligations.
- 17. Should the Ordering Party fail to complete without defects and on time their obligations regarding the completion of work, in particular in accordance with the conditions included in points 12, 13 and 15, then, without prejudice to the Contractor's rights in accordance with point 18, the following shall be binding:
  - a. the Contractor can, at their own discretion, fulfil the Ordering Party's obligations on their own or order their fulfilment to a third party, or undertake other actions suitable in given circumstances in order to prevent and limit the consequences of non-fulfilment of obligations by the Ordering Party.
  - b. The Contractor can (without any risk of compensation of any other responsibility) cease to perform the Agreement in full or in part. They should immediately inform the Ordering Party about such ceasing.
  - c. If the subject of the delivery is not in the place of the assembly, then the Contractor should take care, at the Ordering Party's risk, about the storing of the subject of the delivery. At the Ordering Party's request, the Contractor shall insure the subject of the delivery. The cost of insurance shall be borne by the Ordering Party.
  - d. Should the fulfilment of the Agreement be delayed due to the Ordering Party's non-fulfilment of obligations, then the Ordering Party should pay the Contractor such part of Contractual Price which would be payable, had the delay not occurred.



e. The Ordering Party should compensate the Contractor for all suitable costs which are not included in point 44, as well as 45 of these Terms and Conditions, provided the Contractor had incurred such costs.

18. If the completion of the Work was made impossible due to the Ordering Party's non-fulfilment of obligations in accordance with point 17, and the non-fulfilment is not connected with the circumstance regulated in point 67, then the Contractor can still demand in writing from the Ordering Party that they compensated for the losses connected with the Ordering Party's non-fulfilment of obligations within the time provided by the Contractor.

Should the Ordering Party fail to compensate within that time for the loss connected with the non-fulfilment of obligations due to the cause for which the Contractor is not liable, then the Contractor shall be entitled to withdraw from the Agreement in writing. The Contractor shall be entitled to remuneration for the damage they had suffered in connection with the non-fulfilment of obligations by the Ordering Party. The compensation can exceed the value of Contractual Price and can include also lost benefits.

#### **ACTS AND LOCAL REGULATIONS**

19. The Contractor shall ensure that the Work was in accordance with the acts and regulations relating to the Work and that it was in accordance with them also in the remaining scope. At the Contractor's request, the Ordering Party shall provide them with suitable written information about those acts and regulations.

20. The Contractor can conduct additional works connected with the conversion (alteration) of the subject of the Agreement the necessity of which will appear from acts and regulations mentioned in point 19, or from the changes of the generally accepted rules and their interpretations, provided such a change would occur between the date of offer submission and the date of accepting the subject of the delivery. The Ordering Party shall bear all separate costs as well as other consequences resulting from such changes, in particular the costs of works connected with the conversion.

Should the Parties fail to reach an agreement as to the costs falling separately and as to all other consequences of acts and regulations mentioned in point 19, then until the settlement of a dispute, the Contractor should be remunerated for the costs of works connected with the conversion according to point 72 pursuant to the time of performing work and the materials used. The Ordering Party shall be solely responsible for obtaining all the necessary permits, permissions, possibly opinions of proper administration bodies necessary for the construction and use of the subject of the delivery.

#### **CHANGES**

21. With the reservation of point 25, the Ordering Party shall be entitled until the moment of acceptance of the Work to demand changes in the scope, structure and construction. The Contractor may propose such changes in writing.

22. The demand for changes should be submitted to the Contractor in writing, and the changes must be described in detail.



23. The Contractor shall inform the Ordering Party in writing immediately after receiving the demand for changes or an individual proposal, whether the requested change introduced and what differences result from the change in relation to the Contractual Price, date of completion of works and other provisions of the Agreement.

The Contractor shall inform the Ordering Party about changes also in the case when changes are caused by changes acts and regulations pursuant to point 19.

24. Should the completion of the Work be delayed due to the differences between the Contractor and the Ordering Party with regard to the consequences of changes, the Ordering Party should pay the Contractor such part of Contractual Price which would be payable, had the delay not occurred.

25. With the reservation of the provisions of point 20, the Contractor shall not be obliged to introduce the changes demanded by the Ordering Party until the moment the Parties have reached agreement as to the effect on the Contractual Price, date of completion of work, or other contractual provisions, or until the dispute is settled in accordance with point 72.

#### **TRANSFER OF RISK**

26. The risk of loss or damage of the Subject of the delivery shall be transferred onto the Ordering Party in accordance with the agreed commercial clause which needs to be interpreted pursuant to INCOTERMS binding at the moment of concluding the Agreement.

Should the Agreement not contain a special clause on delivery, the delivery of the Subject of the Agreement shall be EXW delivery loco Contractor's plant.

Each type of risk or loss or damage of the Work, which is not included in the provisions of the first paragraph of that point, shall be transferred onto the Ordering Party at the moment of acceptance.

After the transfer of risk, the Ordering Party shall bear the risk for any kind of loss or damage of the Subject of the delivery or of the Work, provided such a loss or damage is not the result of the Contractor's negligence.

#### **EXAMINATION AFTER ACCEPTANCE**

27. After the completion of the assembly, in case of the absence of other provisions, acceptance examination should be conducted in order to determine whether the Work is in accordance with contractual provisions in the scope of acceptance.

The Contractor shall inform the Ordering Party about the Work being ready for acceptance. This information should include such date of conducting acceptance examination that the Ordering Party had enough time to prepare for it, and for ordering the representation during the examination. However, this date cannot be longer than three days from the date of reporting the readiness for acceptance.

The Ordering Party shall bear all costs of acceptance examinations. The Contractor shall bear the costs of their employees and their other representatives.



28. The Ordering Party shall make available, at their expense, the power, water, fuel, raw materials and all other materials, provided they are necessary for conducting the acceptance examinations and the last adjustments when preparing the acceptance examinations. They shall also install, at their expense, the items of equipment and shall make available employees and auxiliary measures necessary for conducting acceptance examinations.
29. If the Ordering Party received the information pursuant to point 27 and does not fulfil their obligations according to point 28, or in some other way hinders the conducting of acceptance examinations, then the acceptance examinations shall be deemed completed with a positive result from the day which is given as the date of acceptance examinations in the information from the Contractor.
30. The acceptance examinations shall be conducted during regular working hours. If the Agreement does not contain any provisions concerning the technical requirements, then the generally accepted practice in a given branch of industry existing in the country of manufacture.
31. The Contractor shall prepare a report from acceptance examinations. This report shall be sent to the Ordering Party. Unless the Ordering Party is represented at acceptance examinations, then after receiving the information in accordance with point 27 they cannot question the correctness of the acceptance report.
32. If during the acceptance examinations it will turn out that the Work is in a significant way at variance with the Agreement, then the Contractor shall immediately remove the existing significant defect. At the immediate written request of the Ordering Party, the examinations shall be conducted again pursuant to points 27-30. It shall not apply to insignificant defects.

## ACCEPTANCE

33. The Work shall be considered accepted when
  - a. acceptance examinations have been concluded with a positive result or in accordance with point 29 are deemed to have concluded with a positive result, or
  - b. if the Ordering Party received written information from the Contractor that the Work has been completed, provided it corresponds to the contractual provisions concerning acceptance. However, this rule shall only be binding in the cases in which the Parties did not agree to conduct acceptance examinations.

The defects which do not affect negatively the efficiency of the Work, its functionality, shall not constitute the reason for refusing to conduct acceptance.

34. Before the acceptance, the Ordering Party shall not be entitled to use the Work or its parts. Otherwise, the Work shall be deemed accepted by them, provided the Contractor has given their written consent. The Contractor shall not be obliged then to conduct acceptance examinations.
35. With the acceptance of the Work in accordance with point 33 or 34 the date described in point 52 begins. At the written request of the Contractor, the Ordering Party shall issue the statement about the date of Work acceptance. Should however the Ordering Party not issue such a statement, it shall have no negative effect on the acceptance pursuant to points 33 and 34.



## COMPLETION OF WORKS. DELAY OF THE CONTRACTOR

36. The Work is deemed concluded together with the acceptance according to points 33 and 34.
37. If, instead of the date of completion of works, the Parties agreed on a period with the expiry of which the acceptance should take place, this period shall commence together with the conclusion of the Agreement, completing all the official formalities, making all payments falling due at the moment of signing the Agreement, possibly paying all agreed securities and fulfilling any further preliminary conditions.
38. If the Contractor is able to foresee that they will not meet their obligations within the time agreed in the Agreement, they should immediately inform the Ordering Party about that in writing, giving the reason, and – as far as possible – the predicted date on which they will be able to fulfil their obligations. Should the Contractor fail to inform the Ordering Party in such a way, the Contractor shall be entitled to demand the reimbursement of the costs which they incur due to delay.
39. The Contractor shall have the right to postpone the completion date, if the delay is connected with:
- one of the circumstances agreed in point 67, or
  - works connected with the conversion according to point 20, or
  - changes in accordance with points 21–25, or
  - ceasing to perform the Agreement in accordance with points 17, 47 or 70, or
  - late fulfilment of any obligations which concern the Ordering Party, or
  - actions or omissions of the Ordering Party, or
  - Force majeure.

The date should be postponed suitably to given circumstances. This provision should be applied regardless of whether the cause of delay will exist before or after the agreed date of Work completion.

40. The delay of the Contractor is when the Work is not completed within the time agreed in points 36, 37 and 39. In connection with the delay on the Contractor's part, the Ordering Party shall be entitled to a lump sum compensation from the day on which the Work should have been completed.

The amount of the lump sum compensation shall be agreed at 0.1 % of the net value of a faulty device for each full week of delay. The value of compensation cannot exceed 5 % of the net value of a device to which a delay applies.

If only a part of the Work is delayed, then the amount of the lump sum compensation shall be determined based on a part of Contractual Price which corresponds to the part of work which cannot be used due to delay.

The lump sum compensation falls due at the moment of seeking compensation in writing by the Ordering Party, however not before the completion of acceptance or the Agreement in accordance with point 41.

The Ordering Party shall lose their right to pay the lump sum compensation, if they will not seek compensation in the period of six months from the date on which the completion should take place.





41. If the delay on the Contractor's part is so significant that the Ordering Party can demand the highest amount of the lump sum compensation in accordance with point 40, and the Work (Subject of the Agreement) is not yet finished, they may determine in writing a suitable period for the completion of Work (Subject of the Agreement) for the Contractor of at least 14 days.

Should the Contractor fail to complete the Work within that last deadline, and the Ordering Party is not liable for the cause of the non-fulfilment, the Ordering Party can, in the form of a written notification, withdraw from the Agreement regarding that part of the Work which cannot be used in accordance with its purpose due to the Contractor's delay.

Should the Ordering Party withdraw from the Agreement, they shall be entitled to compensation for the damage which occurred for them due to the Contractor's delay. The total amount of compensation, including the lump sum compensation in accordance with point 40, cannot exceed 10 percent of that part of the gross Contractual Price which corresponds to the part of the Agreement due to which the Agreement was terminated.

Moreover, the Ordering Party shall be entitled to terminate the Agreement in the form of the written notification to the Contractor, if it appears from the circumstances without any doubts, that the completion of the Work shall be prolonged by the period pursuant to which the Ordering Party would be entitled to the maximum rate of compensation in accordance with point 40.

If the Agreement shall be terminated on that account, the Ordering Party shall be entitled to the maximum rate of compensation and the compensation in accordance with point 41.

42. The Ordering Party's claims in case of the Contractor's delay shall be limited to the lump sum compensation in accordance with point 40 and the withdrawal from the Agreement with the limited compensation according to point 41. All other claims in relation to the Contractor (including the claims for consequential damages) in connection with the delay or non-performance of the Agreement shall be excluded, provided there was no deliberate fault or tort on the part of the Contractor.

## **PAYMENTS**

43. In case of no other provisions, the payment of remuneration (price) owed to the Contractor shall be done in the following way:

- 30% of the agreed price of the Subject of the delivery at the signing of the Agreement;
- 70% of the agreed price when the Contractor has submitted to the Ordering Party the statement about the Subject of the delivery or a significant part of it being ready for shipment from the Contractor's plant.

44. In case of additional works (e.g. assembly), the remuneration due to the Contractor shall be shaped in the following way:

- a. all costs of travel borne by the Contractor's employees, the costs of transport of their tools and personal baggage in an appropriate scope in accordance with the type and class of the means of transport agreed in the Agreement;
- b. a lump sum for additional expenses borne by the employees in connection with their stay outside their place of residence, including a suitable diet, for each day of stay of the



- Contractor's employees outside their place of residence, including days free from work and bank holidays.
- c. the time of work settled in accordance with the hours which the Ordering Party confirmed with their signature on suitable confirmations as the worked time, or when the confirmations of the worked time have been delivered to the Ordering Party, and the Ordering Party did not request them to be corrected within three days from the date of their receipt.
  - d. the time necessary for:
    - preparing and completing formalities connected with the arrival and return;
    - arrival and return and other travels to which the employees shall have the right in accordance with the binding legal regulations, the binding provisions or agreements, collective agreements in the Contractor's country;
    - everyday travels to and from the place of accommodation to the place of assembly, if they are apart more than half an hour of normal driving, and there is no other suitable accommodation in the vicinity of the place of assembly;
    - the periods between the times of work in which work is made impossible due to the circumstances for which the Contractor in accordance with the Agreement is not liable; however all those propositions are subject to rates agreed in subpoint (c);
  - e. in accordance with the Agreement, the Contractor's expenses for making available by them the elements of equipment and possibly for the payment for use of their heavy machinery;
  - f. taxes and duties which the Contractor paid in the country of the provision of works from the receipt amount.
45. In case of assembly, the agreed lump sum price includes all items mentioned in point 44 (a), including subpoint (e). If the assembly is delayed due to reasons for which the Ordering Party or their contractual partner are responsible, and not the Contractor, then the Ordering Party shall compensate the Contractor for:
- a. the periods of waiting and additional travel times;
  - b. costs and additional work in connection with the delay, together with the disassembly, security and the putting up of assembly equipment;
  - c. additional costs, in particular costs which the Contractor bore in relation to the fact that their elements of equipment were involved at the place of assembly longer than it was planned;
  - d. additional costs of workers staying outside their place of residence and costs of assembly workers borne by the Contractor;
  - e. additional costs of financing and insurance;
  - f. other costs which the Contractor bore in connection with the deviations from the assembly schedule.
46. Regardless of the used payment method, payment shall be deemed completed if it was credited on the Contractor's bank account.
47. If the Ordering Party is in arrears with payments, the Contractor can demand default interest counting from the maturity day. The amount shall be agreed by the Parties. Should there be no such agreement, the statutory interest rate shall be binding.



48. In case of delay in payments, the Contractor can, after the written notification of the Ordering Party, cease to perform their contractual obligations until the moment of receiving the payment. The Contractor's conduct in such a case shall not cause for the Contractor any negative consequences, including in particular the obligation of payment any compensations.

If the Ordering Party is in arrears with their payments due for the period of more than three months, the Contractor can, by means of a written notification to the Ordering Party, withdraw from the Agreement and demand from the Ordering Party the compensation of the loss suffered by them. The amount of compensation cannot exceed Contractual Price.

#### **RESERVING OWNERSHIP**

49. The Subject of the delivery shall remain the property of the Contractor until full payment has been made, also including the payment for the assembly of the Subject of the delivery, provided such a reservation of ownership is effective in accordance with the binding legal regulations.

At the Contractor's request, the Ordering Party shall support them in the broad scope in their attempts to protect the Contractor's proprietary rights to the Subject of the delivery in a given country. The Ordering Party shall insure the Subject of the delivery at their own expense. The risk of loss of damage of the Subject of the delivery shall also lie with the Ordering Party.

In case of doubts, it shall be accepted that the reservation of ownership shall not affect the provisions regarding the transfer in accordance with point 26.

#### **RESPONSIBILITY FOR LOSSES BEFORE ACCEPTANCE**

50. The Contractor shall be responsible for the damage to the Work which appeared due to the transfer of risk onto the Ordering Party, provided the damage was not caused by the Ordering Party themselves or a third party for which the Ordering Party is responsible. Also in cases when the Contractor shall not be responsible for the losses of the Work in accordance with this point, they can, at the Ordering Party's request, remove the damage at the Ordering Party's cost.

The Contractor's responsibility for damages on the Ordering Party's property till the moment of the acceptance of the Work shall be limited to the cases in which the Contractor, or a third party for which the Contractor is responsible in the framework of fulfilling this Agreement, caused the damage accidentally. However, the Contractor shall not bear any responsibility for stoppages in production, lost profits, or other economic indirect losses (consequential damages).

#### **RESPONSIBILITY FOR DEFECTS**

51. Pursuant to points 52 to 65 (including 65), the Contractor shall remove a defect, or the deviation (hereinafter referred to as "defect(s)") from the Work which are connected with the defects of the structure or workmanship.

52. The Contractor's responsibility shall be limited to the defects in the Work which occurred within a year from the moment of acceptance. If the time of work of the plant exceeds the



agreed frames, then that date will be shortened properly. Should the acceptance be delayed due to reasons for which the Ordering Party is responsible, the Contractor's responsibility for the losses, except for the case provided for in point 53, shall expire after 15 months counting from the day of delivering the Subject of the delivery or the readiness of the delivery at the latest. For any elements of Work which have been delivered by entities other than the Contractor, such entities will be responsible.

53. The Ordering Party should immediately and in writing report to the Contractor a complaint on account of a defect. Such a reporting of a defect should in each case take place within 24 hours from the moment of its occurrence. The defect should be described in detail in the complaint. If the defect will not be reported by the Ordering Party within the time agreed in this point, they shall lose their right to have the defect removed. If the defect could cause losses, the Ordering Party shall immediately inform the Contractor about that in writing. The Ordering Party shall bear the risk for the damages which result from the failure to send the information.
54. After receiving a complaint, the Contractor should remove a defect in accordance with points 51 to 65 (including 65), provided the defect appeared due to the circumstances for which the Contractor is responsible.

The defect should basically be removed at the place of assembly. However, it depends on the Contractor whether they will order the defective part or the whole Subject of the delivery to be sent to their plant in order to repair or replace it.

If the works connected with the removal of a defect are conducted on the place of assembly, then the points 15 and 50 shall respectively apply. The time of repairs shall each time be prolonged by the time necessary for the delivery of replacement parts from the Contractor's suppliers.

The Contractor shall disassemble and assemble the Subject of the delivery, as far as it is necessary and requires special knowledge. If the special knowledge is not required, the Contractor's obligation regarding that defect terminates at the delivery of the correctly repaired or replaced part of the Ordering Party.

55. If the Ordering Party reported a defect in accordance with point 54 and the defect for which the Contractor is responsible cannot be found, then the Ordering Party should cover the costs which the Contractor bore in connection with that reporting of a loss.
56. The Ordering Party should, at their own expense, try to disassemble and assemble the elements of equipment which are not parts of the Work, provided it is necessary to remove the defect.
57. In case of the lack of other provisions, the necessary transport of the delivery and/or part of the Subject of the delivery to and from the Contractor's in connection with the removal of defects for which the Contractor is responsible, shall take place at the risk and cost of the Contractor. In case of such transport, the Ordering Party should observe the Contractor's instructions.
58. If the Work is not in the place of the assembly, the Ordering Party shall cover all additional costs which the Contractor should bear in connection with that when removing a defect.
59. The replaced defective parts should be given for the disposal of the Contractor and they become their property.



60. Should at the proper time the Contractor fail to fulfil their obligations in accordance with point 54, then the Ordering Party can determine in writing the final deadline for the Contractor in which the Contractor should fulfil their obligations.

Should the Contractor fail to fulfil their obligations with the final deadline, then the Ordering Party may conduct the necessary repairs or order them to third parties at the cost and risk of the Contractor.

If the Ordering Party or a third party conducted a successful repair, then all claims of the Ordering Party regarding that defect in relation to the Contractor shall be covered together with the reimbursement of suitable costs borne by the Ordering Party.

61. If the repair in accordance with point 60 ends with a failure,
- a. the Ordering Party may demand the lowering of the Contractual Price corresponding to the decreased value of the Work, provided the decrease may in no case exceed ten percent of the Contractual Price, or
  - b. if the defect is so significant that the Subject of the delivery is not fit for use, the Ordering Party may withdraw from the Agreement after the written notification to the Contractor. The Ordering Party may demand the covering of the loss incurred by them in the maximum amount of 10 percent of the net Contractual Price.
62. The Contractor shall not be responsible for the defects which are connected with the materials supplied to them by the Ordering Party or the structure ordered or specified in detail by the Ordering Party, possibly with the changes introduced in accordance with the Ordering Party's request.
63. The Contractor shall be responsible only for the defects which occur in the conditions of use provided for in the Agreement and in case of proper use of the Work.

The Contractor shall not be responsible for the defects which are connected with improper maintenance by the Ordering Party or with the changes made without the prior written consent of the Contractor.

Finally, the Contractor's responsibility shall not include the normal wear and tear, possibly deterioration.

64. Without prejudice to the provisions of points 51-56, the Contractor's responsibility for defects in each part of the Work shall be limited to a year from the moment of acceptance. Should the acceptance be delayed due to reasons for which the Ordering Party is responsible, the Contractor's responsibility for defects shall expire after 15 months from the delivery of the Subject of the delivery at the latest.
65. With the reservation of the provisions of points 51-64, the Contractor shall not be responsible for the defects. It applies to all losses caused by the defects such as stoppages, lost profits or other indirect losses.

The limitation of the Contractor's responsibility shall not be binding in case of the deliberate Contractor's fault.



## **RESPONSIBILITY FOR LOSSES CAUSED BY THE WORK**

66. The Contractor shall not be responsible for material defects, caused by the Work after its completion, if it is in the Ordering Party's possession. Moreover, the Contractor shall not accept any responsibility for losses in products produced by the Ordering Party or in goods which contain the product produced by the Ordering Party.

If the Contractor is held responsible by a third party for the loss, as understood by the previous paragraph, the Ordering Party should defend the Contractor and compensate them for the loss.

If a third party seeks a compensation claim described in this point in relation to one of the Parties, that Party should immediately inform about that the other Party in writing.

The Contractor and the Ordering Party shall appear before a court or a conciliatory court which shall examine the compensation claim lodged against one of the Parties in relation to the alleged loss caused by the Work.

In case of any doubts, each time it shall be accepted that the competent court shall be the common court of law having jurisdiction over the Contractor's registered office.

## **FORCE MAJEURE**

67. Each of the Parties shall be entitled to cease to fulfil its contractual obligations, if such fulfilment is prevented or hindered significantly by the following circumstances: workers' disputes (also strikes) and all circumstances that are independent of the will of the Parties, such as fire, war, general mobilization, uprising, requisition, confiscation, embargo, limitations in the consumption of energy as well as faulty or late deliveries from subcontractors due to the circumstances mentioned in this point.

Should any of the circumstances mentioned in this point occur before or after the conclusion of the Agreement, then it authorizes to cease the fulfilment of contractual obligations only when the effect of that circumstance onto the fulfilment of the Agreement could not be foreseen at the moment of signing the Agreement.

68. A Party hereto quoting the Force majeure should immediately inform the other Party in writing about the occurrence and end of such circumstances.

If the Force majeure prevents the Ordering Party from the fulfilment of their contractual obligations, they should reimburse the Contractor with paid securities and protections of work.

69. Despite all the consequences determined in these General Terms and Conditions, each Party shall have the right to withdraw from the Agreement by notifying the other Party in writing, if the ceasing of the fulfilment of the Agreement in accordance with point 67 lasts more than six months.

## **NON-FULFILMENT OF OBLIGATIONS POSSIBLE TO BE FORESEEN**

70. Without prejudice to other provisions of these Conditions regarding the stopping to fulfil the obligations, the Contractor shall have the right to stop to fulfil their contractual obligations, if



it is clear, from the circumstances, that the other Party will not be able to fulfil their obligations. The Contractor should immediately inform the other Party in writing about the non-fulfilment of obligations.

#### **INDIRECT DAMAGES**

71. With the reservation of other provisions of these Conditions, the Contractor's responsibility in relation to the other Party for production downtimes, lost profits, no possibility to use, contractual losses, or other indirect losses, is hereby excluded.

#### **DISPUTES AND APPLICABLE LAW**

72. Any disputes which arise in connection with the agreement or resulting herefrom shall be finally settled in accordance with the Polish law by the competent court pursuant to point 66 hereof.
73. This Agreement shall be governed by material law of the Contractor's country.

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